FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

Corrected DECISION
As to Parties of Interest Only
HMO/158194

PRELIMINARY RECITALS

Pursuant to a petition filed June 04, 2014, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on August 07, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether iCare correctly reduced the Petitioner's personal care worker (PCW) service hours in March 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Liz Bartlett, General Counsel
iCare
1555 N. Rivercenter Drive
Suite 206
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. On February 12, 2014, Preferred Home Health submitted on behalf of the Petitioner, a request for prior authorization of 2340 units (585 hours total/22.5 hours per week/3.21 hours per day) of

Personal Care Worker (PCW) hours for the 26 week period between February 11, 2014 and August 9, 2014. (Exhibit 3, attachment 1, pgs. 35)

3. This request for services was based upon a Personal Care Screening Tool (PCST) completed by Preferred Home Health on December 30, 2014. (Exhibit 3, attachment 1, pgs. 39-44)

4. iCare approved the request pending an independent review. (Testimony of Margaret [redacted], iCare Utilization Nurse)

5. iCare contracted with ANS Home Health (ANS) to conduct an independent review of the Petitioner's needs. (Id.)

6. On February 26, 2014, ANS went to the Petitioner's home to complete another PCST. (Exhibit 3, attachment 1, pgs. 23-33)

7. On March 19, 2014, iCare sent the Petitioner a notice indicating that effective March 29, 2014, it would be reducing her PCW hours to 1.25 hours per day, based upon the PCST completed on February 26, 2014. (Exhibit 3, attachment 1, pgs. 17 and 18)

8. The Petitioner filed a grievance on April 14, 2014. (Exhibit 3, attachment 1)

9. On May 5, 2014, the Grievance Committee determined that a new PCST should be completed. The Petitioner was made aware of this determination on May 6, 2014. (Exhibit 3, attachment 1 and attachment 3)

10. On May 12, 2014, Brightside Home Care, completed the new PCST. (Exhibit 3, attachment 2)

11. Based upon the May 12, 2014 PCST, it was determined that Petitioner needed one hour per day of PCW Services. (Testimony of Ms. [redacted]; Exhibit 3, attachments 2 and 3)

12. The Grievance Committed considered the May 12, 2014 PCST, but determined that upholding the reduction to 1.25 hours per day of PCW services was appropriate. (Exhibit 3, attachment 1; Testimony of Ms. [redacted])

13. On May 23, 2014, iCare notified the Petitioner of the Grievance Committee's decision to uphold the reduction of services to 1.25 hours per day. (Exhibit 3, attachment 3)

14. The Petitioner filed an appeal with the Division of Hearings and Appeals that was received on June 4, 2014. (Exhibit 1)

DISCUSSION

Under the discretion allowed by *Wis. Stat., §49.45(9)*, the Department of Health Services (DHS) requires MA (Medical Assistance) recipients to participate in HMOs. *Wis. Admin. Code, §DHS 104.05(2)(a).* MA recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. *Wis. Admin. Code, §DHS 104.05(3).*

The criteria for approval by a managed care program contracted with the DHS are the same as the general MA criteria. See *Wis. Admin. Code, §DHS 104.05(3)* which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. The department must contract with the HMO concerning the specifics of the plan and coverage. *Wis. Admin. Code, § DHS 104.05(1)*.

If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with DHS or appeal to the Division of Hearings and Appeals.

Just as with regular MA, when the department denies a grievance from an HMO recipient, the recipient can appeal the DHS's denial within 45 days. *Wis. Stat., §49.45(5), Wis. Admin. Code, § DHS 104.01(5)(a)3.*

When determining whether to approve any service, the HMO, as with the Division of Health Care Access and Accountability (DHCAA), must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, §DHS §107.02(3)(e)*:

> (e) *Departmental review criteria.* In determining whether to approve or disapprove a request for prior authorization, the department shall consider:
>
> 1. The medical necessity of the service;
> 2. The appropriateness of the service;
> 3. The cost of the service;
> 4. The frequency of furnishing the service;
> 5. The quality and timeliness of the service;
> 6. The extent to which less expensive alternative services are available;
> 7. The effective and appropriate use of available services;
> 8. The misutilization practices of providers and recipients;
> 9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
> 10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
> 11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
> 12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

> (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
> (b) Meets the following standards:
>
> 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
> 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
> 3. Is appropriate with regard to generally accepted standards of medical practice;
> 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
> 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
> 6. Is not duplicative with respect to other services being provided to the recipient;
> 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
> 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
> 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.
>
> *Wis. Admin. Code, §DHS 101.03(96m)*

For any prior authorization request to be approved, the Medicaid recipient must show that the requested service satisfies the generic prior authorization criteria listed above. At their core, those criteria include the requirement that the service be medically necessary. *Id.*

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, Preferred Home Health and ANS Home Health, completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located on the Forward Health website: https://www.forwardhealth.wi.gov/WIPortal, under topic number 3165.

The responses are then cross-references with the Personal Care Activity Time Allocation Table, which is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic* #3165. This chart can also be found at the aforementioned website. A copy of the table was also attached to Exhibit 3, attachment 4).

In general seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs) are also examined.

The main area in dispute between the parties is whether the Petitioner needed assistance with toileting. Indeed, this is where the main difference between the PCST completed by Preferred Home Health and the two subsequent PCST's completed by ANS and Brightside Home Health deviate. The PCST from Preferred Home Health indicated that the Petitioner needed assistance with changing an incontinence product once a day and that she needed incontinence care two times a day. (Exhibit 3, attachement 1) In the PCST completed by ANS, it is noted that the Petitioner reported that she is able to go to the bathroom without assistance. (Id.) The PCST completed by Brightside Home Health indicates that the Petitioner demonstrated sitting down and getting up from the toilet and that the Petitioner reported that she is able to wipe herself, wash her hands and adjust her clothing, though she has some issues with incontinence due to hemorrhoids or coughing. (Exhibit 3, attachment 2)

Based upon what Petitioner self-reported and demonstrated, it is found that iCare correctly determined that Petitioner did not need assistance with toileting at the time it modified her request for PCW services in March 2014.

At the hearing, the Petitioner stated that she has been falling; that she has developed cataracts and now needs a hearing aid. The documentation submitted by the Petitioner in Exhibit 2, indicates that she was discharged from treatment on July 31, 2014 from Wheaton Franciscan Urgent Care after suffering from a hip injury and that she was categorized as a moderate fall risk. (Exhibit 2, pg. 5) Those same records, indicate that she was seen by an eye doctor on May 13, 2014 and that she does NOT have diabetic retinopathy and that her cataracts are mild. (Exhibit 2, pg.3)

These are changes in circumstances which warrant a new PCST. Petitioner will have to have the agency that currently provides her PCW services complete a new PCST and submit it to iCare with a new prior authorization request for additional PCW services.

CONCLUSIONS OF LAW

iCare correctly modified the Petitioner's request for PCW services in March 2014.

THEREFORE, it is **ORDERED**

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of September, 2014

\s\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on September 17, 2014.

iCare
Division of Health Care Access and Accountability